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Attorneys for Defendants/Counterclaimants
EASTERN TOOLS & EQUIPMENT, INC.,
and GUOXIANG FAN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

XUCHU DAI, as the bankruptcy administrator for CHANGZHOU AMEC EASTERN TOOLS AND EQUIPMENT CO., LTD.
Plaintiff.

EASTERN TOOLS & EQUIPMENT,
INC., a California corporation, and
GUOXIANG FAN, an individual,
Defendants.

Case No. EDCV11-0354 VAP (DBTx)

JOINT REPORT OF COUNSEL
[Fed.R.Civ.P. 26(f) and L.R. 26-1]

Date: June 13, 2011
Time: 1:30 p.m.
Ctrm: Courtroom 2
3470 Twelfth St.
Riverside, CA

The Honorable Virginia A. Phillips

AND RELATED COUNTERCLAIMS

1 **I. INTRODUCTION.**

2 Pursuant to Fed.R.Civ.P. 26(f) and L.R. 26-1, an in-person meeting was held
3 on May 18, 2011 and was attended by:

4 Enoch H. Liang, attorney for Plaintiff;

5 Rodney W. Bell, attorney for Defendants/Counterclaimants

6 During the meeting, the parties discussed various issues regarding this
7 litigation, including their respective positions as to the appropriate timing and scope
8 of discovery, expert disclosures, motion practice, and trial. Those positions and the
9 parties' proposals to the Court are set forth below.

10 **II. FACTUAL SUMMARY OF THE CASE.**

11 Pursuant to the Court's Order Setting Scheduling Conference, the parties
12 provide the following factual summary of the case:

13 A. Plaintiffs' Complaint / Defendants' Answer and Counterclaim

14 Plaintiff Xuchu Dai ("Plaintiff"), as the bankruptcy administrator for Counter-
15 Defendant Changzhou AMEC Eastern Tools and Equipment Co., Ltd. ("AMEC")
16 brings this action against Defendants to confirm and enforce a foreign arbitral award
17 under the Convention on the Recognition and Enforcement of Foreign Arbitral
18 Awards ("New York Convention"), 9 U.S.C. Sections 201-208, and the Federal
19 Arbitration Act ("FAA"), 9 U.S.C. Sections 1-16. An arbitral award was rendered
20 in Plaintiff's favor by the China International Economic and Trade Arbitration
21 Commission ("CIETAC") on December 29, 2009.

22 Defendants answered on April 4, 2011 and counterclaimed against
23 Changzhou AMEC Eastern Tools and Equipment Co. Ltd. for a declaratory
24 judgment that the subject award was not subject to confirmation under the New
25 York Convention. Defendants also raised affirmative defenses.

26 B. Other Defendants

27 All defendants have appeared in the action.

1 **III. DISCOVERY PLAN.**

2 The parties jointly propose the following discovery plan:

4 **A. Initial Disclosures**

5 The parties agree to make and complete their initial disclosures pursuant to
6 Fed.R.Civ.P. 26(a)(1) by June 24, 2011.

8 **B. Subjects of Discovery**

9 The parties agree discovery will be needed on the following topics:

- 10 1. The circumstances surrounding the execution of the July 26,
11 2007 Agreement and the April 26, 2007 Agreement, each purportedly
12 providing for arbitration of disputes among the Parties.
- 13 2. Whether Defendants waived objecting to the enforceability of the
14 arbitration agreement by fully participating in the arbitration.
- 15 3. The procedural background relating to the CIETAC arbitration.

17 **C. Discovery Completion Date**

18 The parties propose that all non-expert discovery be served sufficiently early
19 so that responses are due by and depositions are completed by October 31, 2011.

21 **D. Expert Witnesses**

22 The parties will also make any required expert disclosures pursuant to Federal
23 Rule of Civil Procedure 26(a)(2) and Local Rule 26-1, but according to the
24 following schedule:

- 25 • Federal Rule of Civil Procedure 26(a)(2)(A) and 26(a)(2)(B) disclosures
26 to be made no later than 2 weeks after the close of fact discovery;
- 27 • Federal Rule of Civil Procedure 26(a)(2)(C)(ii) disclosures to be made
28 within 45 days after the close of fact discovery; and,

1 • All remaining expert discovery to be completed 75 days after the close of
2 fact discovery.

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4 E. Disclosure or Discovery of Electronically-Stored Information

5 The parties do not believe that electronically-stored information (“ESI”) will
6 play a significant role in discovery in this case. The parties have agreed that all
7 documents and information are to be produced in paper format, but each party may
8 request electronic copies of any paper documents produced.

9 To the extent that there is ESI, the parties will meet and confer to produce
10 electronic documents in a mutually agreeable form. Any ESI shall not be destroyed,
11 deleted, or otherwise discarded.

12

13 F. Handling of Privilege Claims and Confidentiality Claims

14 The parties propose that privilege logs be produced no later than thirty (30)
15 days after responsive documents are produced or withheld.

16 If necessary, the parties agree to provide a proposed stipulated protective
17 order to the Court governing the treatment of confidential or proprietary
18 information.

19

20 G. Changes in Limitations on Discovery / Phased Discovery

21 The parties agree there should be no changes or limitations to the rules of
22 discovery as set forth in the Federal Rules of Civil Procedure and Local Rules of the
23 Central District.

24 The parties are of the view that it is not necessary to conduct discovery in
25 phases or that discovery should not be limited to, or focused on, particular issues at
26 this time.

1 **III. ADDITIONAL LOCAL RULE 26-1 MATTERS.**

2 A. Complexity of Case

3 The parties do not anticipate that this case will be sufficiently complex as to
4 require the procedures of the Manual for Complex Litigation.

6 B. Magistrate Judge

7 The parties do not consent to have a Magistrate Judge preside over all
8 proceedings.

10 C. Motion Schedule

11 The parties propose the following cutoff date by which all potentially
12 dispositive motions shall be served and filed: February 6, 2012.

14 D. Settlement

15 The parties believe settlement cannot be evaluated prior to the completion of
16 at least some initial discovery. Pursuant to L.R. 16-15.4, the parties recommend that
17 the Court approve Settlement Procedure No. 1.

19 E. Trial Estimate

20 The parties estimate that a bench trial of this matter will require no more than
21 3 days.

23 F. Additional Parties

24 Not applicable. All possible parties have been joined.

1 **IV. OTHER MATTERS.**

2 **A. Pretrial Conference**

3 The parties request a pretrial conference on or around March 12, 2012.

5 **B. Pretrial Disclosures**

6 The parties agree pretrial disclosures and final lists of exhibits and witnesses
 7 under Fed. R. Civ. P. 26(a)(3) shall be served and filed by February 27, 2012
 8 (Plaintiff). The parties further agree objections to trial exhibits and witnesses
 9 identified shall be served and filed by March 5, 2012.

11 **V. SUMMARY OF PROPOSED DATES.**

| <u>Event</u> | <u>Parties' Proposed Dates</u> |
|--|--------------------------------|
| Initial Disclosure Exchange | June 24, 2011 |
| Last to Amend Pleadings or Add Parties | July 1, 2011 |
| Fact Discovery Cut-off | October 31, 2011 |
| Expert Witness Disclosure | November 14, 2011 |
| Written Expert Report Exchange Deadline | November 14, 2011 |
| Rebuttal Expert Disclosure and Rebuttal Report Exchange Deadline | December 15, 2011 |
| Close of Expert Discovery | January 16, 2012 |
| Dispositive Motion Cut-off | February 6, 2012 |
| Final Pretrial Conference | March 12, 2012 |
| 3-day Bench Trial | March 26, 2012 |

1 Dated: May 27, 2011

CHANG & COTÉ[®]
A Limited Liability Partnership

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By: /s/ Rodney W. Bell

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Rodney W. Bell

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Audrey L. Khoo

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Attorneys for Defendants/
Counterclaimants EASTERN TOOLS
& EQUIPMENT, INC. and
GUOXIANG FAN

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Dated: May 27, 2011

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By: /s/ Enoch H. Liang

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Enoch H. Liang

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Attorneys for Plaintiff Dai Xuchu, as
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